



125 BROAD STREET, NEW YORK, NY 10004 TEL 212 471-8500 FAX 212 344-3333 WWW.HERZFELD-RUBIN.COM

September 9, 2015

Daniel V. Gsovski
Direct Line: (212) 471-8512
dgsovski@herzfeld-rubin.com

BY ECF

Hon. Ronald L. Ellis
United States District Court
500 Pearl Street, Suite 1970
New York, NY 10007-1312

Re: Pinks, et al. v. M&T Bank - 13 Civ. 1730 (LAK)(RLE)

Dear Magistrate Judge Ellis:

Defendant M&T Bank Corp. (M&T) apparently misapprehends Plaintiff's request (Dkt. #90) seeking an extension of time until October 1, 2015 to file a Motion for Reconsideration of this Court's R&R of Sept. 2, 1015 (Dkt. #89). In seeking to extend its reconsideration deadline to coincide with the agreed objection extension to October 1, 2015, Plaintiff is not attempting to proceed both before Your Honor and Judge Kaplan at the same time. Nor could he.

The rule in this and other Districts is settled – “during the pendency of a motion for reconsideration before a magistrate judge [under Fed.R.Civ.P. 72(a)], the time for filing an objection to the District Court is tolled.” *Norex Petroleum Ltd. v. Access Industries, Inc.*, 2003 WL 21872389 at *1 (S.D.N.Y. Aug. 7, 2003); *E.E.O.C. v. Venator Group Specialty, Inc.*, 2001 WL 246376 at *4 (S.D.N.Y. Mar. 13, 2001)(same); *Yurman Design, Inc. v Chaindon Enterprises, Inc.*, 2000 WL 1871715 at *1 (S.D.N.Y. Dec. 20, 2000)(same). Accord, e.g. *Fox Industries, Inc. v. Gurovitch*, 2005 WL 2456896 at *1 (E.D.N.Y. Oct. 5, 2005); *Tomlinson v. Allstate Indem. Co.*, 2007 WL 404698 at *2 (E.D. La. Feb. 1, 2007), citing *Norex, supra*.

Therefore, Plaintiff is asking for a 15 day extension (until October 1, 2015) to file *either* his objections in the District Court (to which M&T does not object), *or* to file his Motion to Reconsider. The “train wreck” scenario envisaged by M&T is neither sought by Plaintiff nor permissible under the well-settled rule in this District.

Respectfully,
s//Daniel V. Gsovski
Daniel V. Gsovski

cc: All counsel (by ECF)